

REMARKS/ARGUMENTS

Claims 1-3 and 6-18 are currently pending. All claims are rejected. For the reasons set forth herein, the rejections are respectfully traversed.

Claim Rejections under 35 U.S.C. §102

Claims 1, 2, 6-9, 11-13 and 15-18 are rejected under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 5,528,811 to Abidin (hereinafter “Abidin”).

Abidin describes a medical device package. The Examiner’s characterization of Abidin admits that the reference fails to describe a structure in which “the cavity is configured to receive, and to securely and removably retain, no more than a portion of a medical device with electrical contacts therein such that the electrical contacts project from the cavity opening and minor cap member” as required by independent claims 1, 9, and 13. Instead the Examiner asserts that the structure recited in this recited portion is merely an “intended use” of the device. The recited portion of claims 1, 9, and 13, however defines structure that does not permit the medical device to be more than partially inserted into the cavity of the package.

As claimed, the invention of claims 1, 9, and 13 has a cavity that is configured to be of an appropriate size or shape to only permit a portion of the medical device to be inserted therein. This feature of the claimed invention, being recited in the claims, is necessarily a structural facet of the cavity, rather than an intended use, since the wording of claims 1, 9, and 13 explicitly defines and or limits the structure of the claimed apparatus.

The Examiner’s assertion that “the cavity is configured to receive, and to securely and removably retain, no more than a portion of a medical device with electrical contacts therein such that the electrical contacts project from the cavity opening and minor cap member” is an intended use of the device is, therefore, incorrect. Since the definition of the structure of the cavity in claims 1, 9, and 13 is structural and Abidin fails to teach, disclosure, or suggest similar structure, then the rejection of claims 1, 9, and 13, and claims depending therefrom, under 35 USC 102(b) over Abidin must be withdrawn.

Claim Rejections under 35 U.S.C. §103

Each of the rejections under 35 USC 103(a) relies on Abidin as the primary reference. For the reasons recited above, Abidin fails to disclose a cavity having structure that describes or suggests the cavity of any of independent claims 1, 6, and 9, i.e., that “the cavity is configured to receive, and to securely and removably retain, no more than a portion of a medical device with electrical contacts therein such that the electrical contacts project from the cavity opening and minor cap member.” For this reason, none of the cited combinations of references establishes *prima facie* obviousness, due to this defect of the primary reference.

Therefore, the rejection of claims 3, 10, and 14-18 under 35 USC 103(a) must be withdrawn as moot, since no combination can recite each element and limitation of the independent claims from which the rejected claims depend.

CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance and applicants earnestly solicit early examination on the merits and issuance of a Notice of Allowance. Should the Examiner believe that any additional information or amendment is necessary to place the application in condition for allowance, he is urged to contact the undersigned Attorney via telephone at 484-356-1794 or facsimile number 610-644-8717.

The Commissioner is hereby authorized to charge any required fees due in connection with this submission, including petition and extension of time fees, and to credit any overpayment to Deposit Account No. 10-0750 (Docket No. DDI5016USNP/WJ) (Johnson & Johnson).

Respectfully submitted,

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